

# **EXHIBIT 3**

Message

**From:** Peter H. Weinberger [PWeinberger@spanglaw.com]  
**Sent:** 10/4/2024 6:13:10 PM  
**To:** Dan Polster [Dan\_Polster@ohnd.uscourts.gov]; david@specialmaster.law  
**CC:** PBM [PBM@listserv.motleyrice.com]; Paul Farrell Jr. [Paul@farrellfuller.com]; Joe Rice [jrice@motleyrice.com]; Jayne Conroy [jconroy@simmonsfirm.com]; Singer, Linda [lsinger@motleyrice.com]; Hunter Shkolnik [Hunter@nsprlaw.com]; Russell Budd [RBUDD@baronbudd.com]; Mark Pifko [MPifko@baronbudd.com]; Paul Geller [pgeller@rgrdlaw.com]; Joanne Cicala [joanne@cicalapllc.com]; Jack Garvey [jgarvey@stranchlaw.com]; ksharp@sanfordheisler.com; 'wespivey@kaufcan.com' [wespivey@kaufcan.com]; phodonnell@kaufcan.com; W. Mark Lanier (wml@lanierlawfirm.com) [WML@LanierLawFirm.com]; Eric Holland [eholland@hollandtriallawyers.com]; rloomer@trdlp.com; jdavis@trdlp.com; James Young x6172 [JYoung@forthepeople.com]; jangoff@findjustice.com; rbonsignore@classactions.us; David R. Scott [david.scott@scott-scott.com]; Judith Scolnick (Deleted User) [jscolnick@scott-scott.com]; Donald A. Broggi [dbroggi@scott-scott.com]; Joseph G. Cleemann [jcleemann@scott-scott.com]; Boone [IMCEACC-+20Boone@namprd15.prod.outlook.com]; Boone, Brian [Brian.Boone@alston.com]; Hooker, Matthew [Matthew.Hooker@alston.com]; ESI-Opioids [esi-opioids@quinnemanuel.com]; Optum.Opioid.Team@alston.com  
**Subject:** Order Setting New Bellwether Process for PBM's (Doc. 5646)

[EXTERNAL EMAIL from [pweinberger@spanglaw.com](mailto:pweinberger@spanglaw.com)]



**This message needs your attention**

- esi-opioids@quinnemanuel.com never replied to this person.

Dear Judge Polster,

This Court ordered the Plaintiffs' Executive Committee (PEC) to "file a document certifying which of the previously identified PBM defendant cases had litigation holds properly implemented at the time the underlying complaints were filed." *Order Setting New Bellwether Process for PBMs* (Doc. 5646). The purpose of this directive is to narrow the field of potential bellwethers from the existing pool of MDL cases.

The PEC intends to only "certify" PEC-filed cases. We are unwilling and unable to certify whether litigation holds were properly implemented in cases represented by non-PEC members. We respectfully submit that such a certification requires a factual inquiry which should come from counsel of record. We note the PEC has already compiled and reported some of this information in the form of a notice. (Doc #: 5589-1) (Filed: 08/13/24). We ask that you amend the Order (Doc. 5646) to direct non-PEC members to certify for the record whether a "litigation hold was properly implemented at the time the underlying complaint was filed."

Based on our understanding of your prior instructions, the PEC intends to strike from the eligible pool of cases those from the 2nd Circuit Court of Appeals (NY, Conn, Vt), cases originating in Ohio, and the cases designated as bellwethers for the Albertson's track.

Respectfully,

Pete Weinberger

Peter H. Weinberger

Of Counsel

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